It is urged that the validity of restrictions on the use and price of chattels should be determined by the principle of the Nordenfelt Case. Wherever such restrictions are necessary reasonably to protect the property rights of the vendor they should be allowed. But even under this test the Motion-Picture Case can be supported. There the vendor sought in his restriction not to protect his property rights in the patent under which he manufactured and sold the machine, but rather to stimulate his business in an independent and separate commodity. The mandate of reasonableness requires that the property right protected must be directly connected with the chattel restricted; that there must be such a relation as that existing between property rights under a patent and the patented article, or property rights in the good-will of a business in proprietary chattels and the proprietary chattel. Where use of an article in connection with accessories other than those prescribed by the vendor is likely to bring the vendor's business in that class of articles into general disrepute, it is only reasonable that the vendor should be permitted to say with what supplies the article may be used. Likewise where the practice of price cutting by retail dealers is likely to destroy the good-will in the business of a manufacturer of a proprietary article built up by an expensive and consistent campaign of advertising, the manufacturer should be permitted to preserve his good-will by enforcing a price restriction and eliminating the dangerous competition among price cutters.[26]

The Clayton Act [27] is essentially declaratory of the common law and should not properly be considered to prohibit such measures as are necessary reasonably to protect vested property rights.

OFFENSES UNDER SECTION THIRTY-SEVEN OF THE FEDERAL CRIMINAL CODE. — Section thirty-seven of the Criminal Code deals with two distinct crimes — conspiracies to commit an offense against the United States, which, as there is no federal common law, has been held to mean conspiracies to violate any federal penal statute; and conspiracies to defraud the United States, which will be considered more at length.[1] This latter clause of the statute has been construed as covering a wide range of offenses. It is well settled that to constitute this offense it is unnecessary that the intent or natural effect of the confederation be to deprive the United States of property or to cause any direct pecuniary loss. It is enough if its tendency be to cause the subversion or derangement of any governmental function.[2] The theory of these cases seems

[26] For an illuminating discussion of the reasonableness of price control see E. S. Rogers, "Predatory Price Cutting as Unfair Trade," 27 HARV. L. REV. 139. See also 30 HARV. L. REV. 68.

[27] See note 21, *supra*.

[1] Section THIRTY-SEVEN OF THE CRIMINAL CODE OF THE UNITED STATES; 35 STAT. AT L. 1096, ch. 321. If two or more persons conspire to commit any offense against the United States, or to defraud the United States in any manner for any purpose, and any of the parties do any act in pursuance thereof . . ., etc.

[2] Haas *v.* Henkle, 216 U. S. 462. A conspiracy to cause the issuance to the defendants of information as to contents of United States reports of the cotton crops. United States *v.* Morse, 116 Fed. 429. A false report by officers of a bank to the comptroller

to be that even though there be no direct loss, the effect of such conduct is to defraud the government in that it tends to bring the United States into disrepute and disrespect, and that this constitutes a very real loss, or perhaps in that it operates as a fraud on the people as a whole through action on the government, which is practically the same as a fraud on the government. Several of the cases seem to go very far in sustaining indictments on this ground.[3]

This statute has been applied to attempts to commit offenses against the election laws, but, due to the fact that in the cases heretofore arising there has always been a federal statute covering the attempted crime, the indictments have clearly fallen under the clause covering conspiracies to commit an offense against the United States.[4] Where the accused conspired with others to bribe electors in an election of state officials, such bribery being made criminal by state law, it was rightly held that this was no offense under section thirty-seven, inasmuch as no federal statute was violated, and the conspiracy being only relative to state matters could not be one to defraud the United States.[5]

In a recent case in the Supreme Court, however, the question was presented whether an attempt by twenty or more defendants to cause various persons to vote more than once at a primary election of members of Congress was a conspiracy to defraud the United States. *United States* v. *Gradwell*.[6] The court, after reviewing the federal legislation on this point, all of which was repealed in 1894, whereby the management of such elections was left largely to the states, decided that section thirty-seven was intended to apply only to offenses against the operation of the government, as distinguished from offenses against the processes by which men are elected to perform such operations. But the fact that there was no legislation in effect dealing with such offenses would not be conclusive, as the term "defraud the United States" is obviously intended to cover cases where no specific statute would apply. But the decision may be supported on a different ground. Penal statutes are always to be strictly construed and never to be extended beyond cases where they are clearly to be intended to apply.[7] Where the action of the conspirators is not intended to have any direct effect on the United States, but is only immediately connected with state authorities; where it is not intended to conceal facts from the United States nor make misrepresentations to them, nor to induce any action by the government or its officials, it may well be held that the plot does not come within the meaning of the words "to defraud the United States."

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of the currency, where such report was required by law. Curley *v.* United States, 130 Fed. 1. Impersonating another at a civil service examination. United States *v.* Lonabaugh, 158 Fed. 314, 179 Fed. 476. Conspiracy to obtain land patent from the United States by fraud, where the patent rightfully belonged to a third party, so no direct pecuniary loss to government. See United States *v.* Stone, 135 Fed. 392; but *cf.* United States *v.* Crofton, 25 Fed. Cas. 680.

[3] Haas *v.* Henkle, 216 U. S. 462; United States *v.* Morse, 116 Fed. 129; *cf.* note 2, *supra*.

[4] *Ex parte* Coy, 127 U. S. 731; United States *v.* Moseley, 238 U. S. 383; United States *v.* Wrape, 28 Fed. Cas. 780.

[5] *Ex parte* Perkins, 29 Fed. 900.

[6] 37 Sup. Ct. Rep. 407. See Recent Cases, p. 313.

[7] United States *v.* Morris, 14 Pet. 464. See SEDGWICK, STATUTORY AND CONSTITUTIONAL LAW, 2 ed., 280.